IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4521 OF 1992

Balu Vithu Mande & Ors. ..Petitioners

versus

Ramchandra Shankar Joshi,
since deceased, by heir
Surekha R. Kulkarni & Ors. ..Respondents

Mr. V. S. Kapse for the Petitioner.
None for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 4TH OCTOBER, 2006

ORAL ORDER :

1. Heard Counsel for the Petitioner. Nobody is present for the Respondents.

2. The petitioner is a tenant he has lost his claim and contention before all the three courts below i.e. Tenancy Awal Karkun, Shrirala, then before the Sub Divisional Officer, Walwa Division, Sangli, and then before the Maharashtra Revenue Tribunal at Kolhapur. The first order of the Tenancy Awal Karkun was in Tenancy Case No. 11 of

1979. It was order in application by the landlord under Section 43-A and 43-B of the Bombay Tenancy and Agriculture Lands Act (hereinafter referred to as the Tenancy Act). This application was opposed by the tenant on the ground that once the landlord gets 50% of the land for his personal cultivation, he cannot exercise his rights under Section 43-A and 43-B of the Tenancy Act. That contention was rejected by Tenancy Awal Karkun, and, all those findings were upheld by the Sub Divisional Officer and Maharashtra Revenue Tribunal.

3. Similar contention is raised by the Counsel for the petitioner - tenant before me. There is no perversity in the findings of all the three courts below. This is a writ petition under Section 227 of the Constitution of India where supervisory powers are to be exercised in cases where the orders of the courts below are perverse.

4. All contentions and aspects of the matter have been considered by all the Courts below and Awal Karkun has rejected the contention of the tenant that application of the landlord under Section 43-A and 43-B of the Tenancy Act, should be

rejected as 32G proceedings were going on. That claim was also rejected.

5. The effect of the order of the Awal Karkun, is that the tenant - petitioner is required to pay rent of Rs.1,800/- per annum to the respondents - landlords because the land is used for growing sugarcane crop. Section 43-A is introduced in the Tenancy Act by introduction of Chapter III-A. Head Note of Section 43-A says that certain provisions of the Tenancy Act, like Section 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 14, 16, 17A, 17B, 18, 27, 31 to 31D (both inclusive), 32 to 32R (both inclusive) etc. shall not apply to __ (b) leases of the land granted ..... for cultivation of the sugar cane..... Counsel for the petitioner tried to contend that the agreement tried to be proved by the landlord was oral and not supported by any agreement. This does not appear to be correct because in the judgment Awal Karkun has relied upon Exhibit ’6’ which is a Kabulayat is of 1940-41 for 11 months, there is specific mention about the sugar-cane crop on the said land. According to the tenant the land was never used for sugar cane. He denied entries in Kul and Khand column, but the Awal Karkun rightly held that in the Kabulayat and in the Record of Rights

entries regarding growing of sugar-cane are made. The tenant may have denied those entries obviously in order to get out of the clutches of the relevant provisions of the Tenancy Act, but the Awal Karkun was fully justified in relying upon the entries in the Revenue records.

6. Counsel for the petitioner also tried to contend that the land was leased for some other purpose. He relied upon the judgment of the Supreme Court reported in **AIR 1987 Supreme Court 637 Sakharam Shripati Jadhav vs. Chandrakant Laxman Agnihotri,** where the matter was remanded to the Authorities to determine whether the lease was for cultivation of sugarcane alone or for multiple purposes. There is no question of remand in this case. Parties, right from the first court i.e. Tenancy Awal Karkun till the last court, knew what is the issue involved, they had adduced evidence, landlord contending that the lease was for sugar-cane, tenant denying the same. Tenant has nowhere raised any plea that he has taken the lease for any other purpose and even though he has taken that plea, there is absolutely no iota of evidence in support of the contention. Therefore, even on

merits, there is no case for the tenant.

7. Learned counsel for the petitioner also tried to contend that the rent was fixed by Tenancy Awal Karkun at the rate of Rs.1,800/- per annum and that it did not took into consideration the criteria laid down in Section 43B sub section(3) of the Tenancy Act. This contention has to be negatived, firstly, on the ground that it does not appear from the order of the Tenancy Aal Karkun that quantum of rent was ever in issue raised by the tenant. Secondly also before the Sub Divisional Officer that issue was not raised and when that issue was raised ultimately before the Maharashtra Revenue Tribunal, Maharashtra Revenue Trbunal in paragraph 6 has considered this aspect. Relevant portion of paragraph 6 is reproduced below:

> **"6. ..... Both lower courts have on such evidence rightly come to the conclusion that the suit land was leased for raising sugarcane. Then the question remained to find out correct quantum of rent. This application for determining rent of the suit land raising sugarcane was given on 20.6.79. So the rent for the year 1979-80 will have to be decided. It is seen that sugarcane crop can be taken by retation. The rent for raising sugarcane can be determined by taking income of average figure of one year out of three years. So for this purpose figures of sugarcane sold to Vishwas**

> **Sahakari Sakhar Karkhana for the years 1978-79, 79-80, 80-81 will have to be taken into consideration. The sugarcane was sold by two tenants to Karkhana. This is seen from the statements proved and placed on record as pages 115 and 121. Minimum figure per year from seeling of sugarcane to the factory would come to Rs.5,800/- and the rent at the rate of 1/4 of this figure would be at the rate of Rs.1,450/-. Then rent from other crops raised in the suit land would make total figure of rent at Rs.1,800/- if added to the figure of Rs.1,450/- hence I find that rent determined at the rate of Rs.1,800/- is not in excessive. Moreover both lower courts which are fact finding courts have arrived at this figure. This Tribunal cannot interfere with this figure."**

8. For all these reasons, I do not find any merit in this petition, the same is dismissed. Rule is discharged. Interim relief, stands vacated. No order as to costs.

(D.G. DESHPANDE, J.)